



DEPARTMENT OF THE NAVY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
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WASHINGTON NAVY YARD DC 20374-5066

IN REPLY REFER TO

JAGINST 5801.3  
Code 16  
29 Jun 2005

JAG INSTRUCTION 5801.3

From: Judge Advocate General

Subj: NAVY LEGAL ASSISTANCE PRACTICE CHECKLISTS

Ref: (a) 10 U.S.C. § 1044  
(b) JAGINST 5800.7D (JAGMAN)  
(c) JAGINST 5801.2A

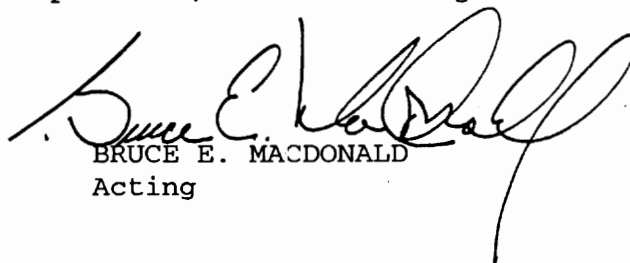
Encl: (1) Legal Assistance Tier I Checklists

1. Purpose. To promulgate policy for and prescribe standard checklists for client assistance within the Navy's Legal Assistance Program.

2. Applicability. This instruction applies to all legal assistance providers in the Navy and Marine Corps, including all Navy and Marine Corps judge advocates, civilian attorneys, and volunteer attorneys; legalmen; legal services specialists; civilian paralegals; civilian legal assistants; and other paid or volunteer legal assistance providers.

3. Policy. Legal assistance, provided by the Navy legal community, is a vital and appreciated contribution to the morale and welfare of our service members, their family member dependents, and other eligible beneficiaries. Because of its importance as a significant "quality of life" benefit, legal assistance personnel will make every effort to satisfy the legal assistance needs of service members and their families.

4. Action. All Navy legal assistance providers will become familiar with enclosure (1). All legal assistance providers will utilize enclosure (1) when providing legal assistance services to service members, their family member dependents, and other eligible beneficiaries.

  
BRUCE E. MACDONALD  
Acting

Distribution:  
JAG Special List 40

## LEGAL ASSISTANCE TIER I CHECKLISTS

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## **MOBILIZATION**

**[Primarily for individual pre-mobilization counseling but may be used as a basis for delivering group briefings.]**

### **OBTAIN BASIC INFORMATION**

- What is the anticipated duration of activation and location of duty station?
- Is the client currently employed?
- Does the client have a spouse or children?
- Does the client have any pending legal issues?

### **DISCUSS USERRA (<http://www.dol.gov/vets/whatsnew/userraguide0704.rtf>)**

- Notice to employer and prompt return
- Rights (escalator position, prompt re-employment, health benefits, protection from dismissal)
- Limitation on cumulative total activated reserve service (not including monthly and annual AT)
- Disqualifying character of service

### **DISCUSS SCRA PROTECTIONS**

- Car and apartment leases/ lease termination
- Stays of proceedings vs. overturn of default judgment provision
- Interest rate cap
- Eviction, foreclosure, and repossession protections
- Insurance coverage for professionals

### **DISCUSS INCOME TAX ISSUES**

- Automatic extension for deployers
- Combat zone income tax exemptions

### **DISCUSS ESTATE PLANNING AND DRAFT NECESSARY DOCUMENTS**

- Will and ancillary documents
- SGLI beneficiary designations

### **DISCUSS POAs**

- General vs. Special
- Need?
- *In loco parentis* (necessary/will it work?)
- Revocation
- Dangers/limitations (not everyone must accept, real property/auto transactions may require special)

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**DISCUSS FAMILY CARE PLANS (see Family Care Plan Checklist, if appropriate)**

- Child care arrangements
- Custody/ support issues
- Guardianship
- Health insurance/TRICARE issues

**ADVISE OF FCRA (FACT) RIGHT TO PLACE "ACTIVE-DUTY ALERT" ON CREDIT REPORT**

- ID Theft issues

**DISCUSS ANY PENDING LEGAL ISSUES****BRIEF GENEVA CONVENTION AND CODE OF CONDUCT**

- Geneva Convention
  - General rules
  - Protected signs and symbols
  - Protected status
  - Responsibilities as POW
- Code of Conduct (brief six articles)

**LOCAL NLSO ITEMS (*add as appropriate*)**

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## **DE-MOBILIZATION**

**[Primarily for individual de-mobilization counseling but may be used as a basis for delivering group briefings.]**

### **OBTAIN BASIC INFORMATION**

- How long was the member activated and does member's cumulative total activated reserve service exceed 5 years (not including monthly and annual AT)?
- Does the client plan to return to his or her job, and does he or she anticipate any problems?
- Does the client have any outstanding legal issues?

### **DISCUSS USERRA (<http://www.dol.gov/vets/whatsnew/userraguide0704.rtf>)**

- Prompt return
- Rights (escalator position, prompt re-employment, health benefits, protection from dismissal)
- Limitation on cumulative total activated reserve service (not including monthly and annual AT)
- Disqualifying character of service
- Exceptions for disability

### **DISCUSS SCRA PROTECTIONS**

- Default judgments/stay of proceedings
- Insurance coverage (malpractice for professionally insured individuals (doctors, lawyers) and health insurance).

### **DISCUSS HEALTH INSURANCE COVERAGE ISSUES**

### **DISCUSS ESTATE PLANNING AND DRAFT NECESSARY DOCUMENTS**

- POAs
  - Revoke
- Modify will (as required)

### **DISCUSS FAMILY CARE PLAN (*see* Family Care Plan Checklist, if appropriate)**

- Terminating guardianship, if necessary

### **DISCUSS CONSUMER LAW ISSUES**

- Check credit report

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**DISCUSS INCOME TAX ISSUES**

- Automatic extension for deployers
- Combat zone income tax exemption

**DISCUSS ANY OUTSTANDING LEGAL ISSUES****ADVISE OF THE CONTINUING RIGHT TO RECEIVE LEGAL ASSISTANCE AND DURATION****LOCAL NLSSO ITEMS** (*add as appropriate*)

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## **PRE-DEPLOYMENT BRIEF**

**DISCUSS SCRA RIGHTS AND PROTECTIONS** (auto/real estate lease termination, eviction protection, stay of proceedings/overtake of default judgments)

**ADVISE OF FCRA (FACT) RIGHT TO PLACE "ACTIVE-DUTY ALERT" ON CREDIT REPORT**

- ID theft issues

**DISCUSS ESTATE PLANNING AND DRAFT ANY NECESSARY DOCUMENTS**

- Will and ancillary documents
- SGLI beneficiary designations

**DISCUSS POAs**

- General vs. Special
- Need?
- *In loco parentis* (necessary/will it work?)
- Revocation
- Dangers/limitations
- Access to financial accounts

**DISCUSS FAMILY CARE PLANS** (*see* Family Care Plan Checklist, if appropriate)

- Child care arrangements/ ID cards/ DEERS
- Custody issues
- Guardianship

**DISCUSS TAX ISSUES**

- Automatic extension for deployers
- Combat zone income tax exemptions
- Income tax filing extensions

**ADDRESS OUTSTANDING LEGAL ISSUES**

**DISCUSS SCRA AND LEASES**

- Residential
- Automobile

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**DISCUSS NLSO SERVICES OFFERED TO DEPLOYER AND FAMILY MEMBERS**

**LOCAL NLSO ITEMS** (*add as appropriate*)



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## **DIVORCE**

### **HAS A CONFLICT CHECK BEEN COMPLETED?**

#### **OBTAIN BASIC INFORMATION**

- When were the parties married?
- Where were the parties married?
- When did the parties separate?
- How long have the parties been in the area and how long do they expect to remain in the area?
- Are there any existing agreements or court orders?
- Are there any pre/post nuptial agreements?
- Are there any children involved?
- Parentage?
- Are there any special needs children or spouse?
- Are there any existing orders or agreements concerning custody, visitation, support?
- Location for previous 6 months and intended future location?
- Were there any prior divorces?
- What were the terms?
- Determine employment and income
- If military, determine the length of military service
- Is there any major property or are there any major debts?
  - Ownership?
  - Liability?
  - Acquired while living in a community property state?
- Are there any existing joint agreements (lease, etc.)?

#### **DISCUSS DIVORCE BASICS AND PROCEDURE**

- Possible bases for divorce
- Jurisdiction choices
- Jurisdictional prerequisites (e.g. separation, counseling)
- Potential costs (contested and uncontested)
- Availability of interim and *pendente lite* orders

#### **DISCUSS SUPPORT**

- Child support
  - Obligation (include marital presumption) and duration
  - Jurisdiction choices
  - Probable amount based on jurisdiction, and effectiveness of private agreements

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- State child support agency assistance
- Spousal support
  - Obligation and duration
  - During divorce
  - Post divorce
  - Factors considered
  - Effectiveness of private agreements
- Future modifications
- Military guidelines (MPM 1754-030; LEGADMINMAN Chapter 15)
- DFAS enforcement

**DISCUSS CHILD CUSTODY** (*see* Child Custody, Visitation, and Support and Family Care Plan Checklist)

#### **DISCUSS PROPERTY AND DEBT**

- Community property and equitable distribution schemes (AZ, CA, ID, LA, NV, NM, TX, WA, WI)
- Divisibility of retirement, probable formula, direct payments (member disability issue)
- Marital waste
- Obligation to creditor despite agreement or court order
- Possibility and effect of bankruptcy pre and post divorce

#### **DISCUSS THE BENEFITS OF A MARITAL SEPARATION AGREEMENT (MSA)**

- Describe MSAs, benefits and limitations
- Consider and discuss MSA applicability/weight in jurisdiction
- Explain negotiation process and/or mediation
- Provide MSA worksheet (if appropriate)

#### **MISCELLANEOUS ISSUES**

- Discuss eligibility for military benefits post-divorce (spouse, children, stepchildren)
- Discuss income tax issues (filing status, exemptions, deductions, credits)
- Discuss estate planning issues and recommend changes
- Discuss SGLI/insurance benefits/Survivor Benefit Plan (if appropriate)

#### **LOCAL NLSO ITEMS** (*add as appropriate*)

#### **WORKSHEETS:**

Divorce questionnaire  
MSA questionnaire

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## **CHILD CUSTODY, VISITATION, AND SUPPORT**

### **OBTAIN BASIC INFORMATION**

- What is the basis for action (divorce, non-marital child, modification of an existing determination)?
- Are there any existing court orders or agreements regarding the children?
- What are the ages and gender of the children?
- Determine whether paternity has been established and how (*see* Paternity checklist)
- What is client's legal relationship to children (natural, step, adopted, guardian)?
- Where do the children live; where have they lived for the previous 6 months; and where are they expected to reside in the future?
- Where do each of the parents live and where have they lived through the children's lifetime?
- How long will the client and other parent be in the jurisdiction?
- Determine the current situation of each parent (married/remarried, employed, deployed, delinquent on support payments)

### **DISCUSS CUSTODY BASICS**

- Discuss custody options and potential arrangements (sole, joint physical, joint legal)
- Discuss best interest standard and factors typically considered for custody and modification
- Discuss process and provide custody pleadings/agreement worksheet, if appropriate
- Discuss jurisdiction issues (local, UCCJEA or UCCJA)
- Discuss removal of child from state

### **DISCUSS MILITARY-SPECIFIC ISSUES**

- Deployment, TAD, and PCS contingency plans
- Page 2 (or equivalent) for military couples
- SCRA rights
- *See* Family Care Plan Checklist (if applicable)

### **DISCUSS CHILD SUPPORT**

- Obligation (include marital presumption) and duration
- Probable amount and effect of private agreements
- Future modifications
- Military guidelines
- DFAS enforcement
- State child support agency assistance
- Jurisdiction (UIFSA, local)

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**DISCUSS VISITATION**

- Legal considerations (parental rights and well-being of the child)
- Practical considerations (geographic proximity, living arrangements of each parent, work/deployment schedule of each parent)

**LOCAL NLSO ITEMS** (*add as appropriate*)**WORKSHEETS:**

Custody/Modification

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## **EARLY RETURN OF FAMILY MEMBERS**

### **REVIEW REGIONAL/LOCAL REGULATIONS**

#### **CIRCUMSTANCES**

- Lost Sponsorship
- Evacuation
- Pending Divorce/Separation
- Custody

#### **EFFECT ON SERVICEMEMBER**

- COLA entitlement
- OHA entitlement/ability to live off-base

#### **PAPERWORK/AGREEMENT**

#### **SUPPORT (Review Military Non-Support checklist)**

- Housing
- BAH
- Medical
- Court ordered

#### **LOCAL NLSO ITEMS *(add as appropriate)***

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## **ADOPTION**

**YOUR CLIENT SHOULD BE THE ADOPTIVE PARENT ONLY. IF NOT POSSIBLE, DISCUSS DUAL REPRESENTATION/CONFIDENTIALITY ISSUES/EXECUTE DUAL REP LETTER**

### **OBTAIN BASIC INFORMATION**

- Why is the adoptive parent(s) seeking to adopt?
- What is the relationship between the adoptive parent(s) and the adoptee?
- What is the identity and status of the adoptee's natural parents and are they likely to consent to adoption?
- How old is the person to be adopted?
- What is the location of the adoptee and the adoptive parent(s)?
- Where has the adoptee resided for the past six months?
- Is the child to be adopted a member of an Indian tribe?

### **DISCUSS THE EFFECTS OF ADOPTION**

- Child support obligations (current and future)
- Inheritance
- Parental rights/obligations

### **DISCUSS BASIC PROCEDURE AND SERVICES AVAILABLE**

- Jurisdiction
- Expected time to complete
- Costs
- Necessity of consent
- In-home study or probationary period required
- Reimbursement of expenses (SECNAVINST 1754.3, DFAS Instruction 1341.1)
- NLSO assistance

### **DISCUSS ALTERNATIVES**

- Is it necessary? Consider Military Requirements for Dependency (10 USCS §1072, DoDINST 1341.1, DoDFMR Vol. 7A Chapter 26)
- Name change
- Guardianship

### **LOCAL NLSO ITEMS *(add as appropriate)***

#### **WORKSHEET:**

Adoption questionnaire

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## **PATERNITY**

### **OBTAIN BASIC INFORMATION**

- What is the basis for alleging paternity?
- Has there been any paperwork (affidavit) or court action yet?
- Is putative father's name on birth certificate?
- Has there been any form of acknowledgment?
- How old is the child?
- What is the marital status of the parties?

### **DISCUSS BASIC PROCEDURES AND METHODS OF DETERMINATION**

- Administrative and judicial proceedings
- Costs and who pays
- Time periods
- Right to DNA test and inadmissibility of extra-judicial DNA tests
- Effect of affidavit of paternity
- Marital presumption
- SCRA issues (stay, waiver, default judgment)

### **DISCUSS THE RIGHTS & RESPONSIBILITIES OF PARENT**

- Duration, amount, and retroactivity of child support (*see* Child Custody, Visitation, and Support Checklist)
- Arrearage amounts determined per each state (check state law)
- Visitation/Custody (*see* Child Custody, Visitation, and Support Checklist)
- Page 2/ID Card/DEERS/TRICARE

### **LOCAL NLSO ITEMS (*add as appropriate*)**

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## **FAMILY CARE PLAN**

***See OPNAVINST 1740.4B***

### **OBTAIN BASIC INFORMATION**

- What is the age and status of the dependent (child, infirm, elderly)?
- What is the marital status of the client?
- Are there any court orders or agreements concerning the dependent?
- What is the anticipated deployment schedule and availability of the client?
- Where is the dependent located and where has the dependent resided for the previous six months?

### **DISCUSS BASIC ISSUES**

- Child/adult care issues
- Educational issues
- Relocation issues
- Rights of biological parent(s)
- Importance of agreements/court documents and the impact of existing agreements/court documents

### **DISCUSS MILITARY ISSUES**

- Implications of no family plan/administrative separation
- Effect of POA

### **LOCAL NLSO ITEMS *(add as appropriate)***

#### **CLIENT HOMEWORK:**

SGLI updated

Will

Page 2/ID Card renewal



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## **GUARDIANSHIP**

### **OBTAIN INFORMATION**

- Why is the client seeking guardianship?
- What is the relationship to the prospective ward?
- Where is the prospective ward?
- What is the basis for the incapacity (age, medical condition, disability, etc.)?
- Has there been a formal determination of incapacity?

### **DISCUSS**

- Jurisdiction for action
- Costs and duration
- Possible interim measures
  - Temporary custody
  - State POA
- Payment under DFAS rules
- VA payee
- Type of guardianship
  - Adult financial/Adult incapacitated
  - Minor Child
  - Person or property only

### **MILITARY REQUIREMENTS FOR SECNAV TRUSTEE**

- DFAS
- Adult service member incapacitation

### **STATE STATUTES**

- Administrative oversight
- Fiduciary responsibilities

### **FINANCIAL GUARDIANSHIP INFORMATION**

- Where did money come from?
- SGLI/Settlement Amounts for minor
- Adult monthly income amounts

### **ADVISE OF GUARDIAN RESPONSIBILITIES**

- Common law or statutory fiduciary duties

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**DOCUMENTS**

- Springing DGPOA (explain procedures)
- Medical documentation of incapacity
- Local requirements for proving

**HAS SOCIAL SECURITY ADMINISTRATION BEEN CONTACTED?****DOES SPOUSE HAVE EMPLOYEE BENEFITS TO ASSIST?****IS THE VA INVOLVED?****LOCAL NLISO ITEMS** (*add as appropriate*)

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## **MILITARY NON-SUPPORT**

### **OBTAIN BASIC INFORMATION**

- What is the branch of service and pay grade of the obligor?
- Has paternity been established?
- What is the identity and relationship to the obligor of the persons seeking support?
- What is the support history of the obligor (arrearages, in-kind support, duration of support)?
- Is there a court order or agreement regarding support?
- Does the obligor have any dependents other than those seeking support?
- Is there any pending legal action regarding support?

### **DISCUSS SERVICE-SPECIFIC MILITARY SUPPORT OBLIGATION**

- Effect of court order or agreement
- To whom an obligation is owed
- Amount of suggested or required support
- Punitive/non-punitive instruction
- Direct and in-kind
- Repercussions of non-support
- Availability of waiver/ exceptions to waiver
- Proposed course of action

### **DISCUSS ALTERNATE/CONCURRENT COURSES OF ACTION**

- Negotiating agreement
- Judicial/administrative action (child support enforcement, private action)
- Draft non-support letter and contact command (if appropriate)

### **LOCAL NLISO ITEMS *(add as appropriate)***

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## **ESTATE PLANNING**

### **HAS THE CLIENT COMPLETED A WILL WORKSHEET?**

### **DO CLIENTS NEED A DUAL REPRESENTATION WAIVER LETTER?**

### **WILLS**

- Is the client's estate worth more than the Federal exclusion amount for estate or gift tax?
- Are any of the possible beneficiaries disabled? (*See Special Needs Trust Checklist*)
- Does client own real property in a state other than their state of domicile? If yes, advise client regarding ancillary probate
- Existing Pre-Nuptial or Community Property Agreements? If yes, advise client of impact of these agreements on his/her will
- Explain difference between probate and non-probate property including beneficiary designated insurance, survivorship owned property, beneficiary designated financial accounts such as IRAs, 401Ks, joint bank accounts
- Regarding insurance, if client owns policy on his/her life explain that entire death benefit is counted as an asset and not just the cash value
- Review with client the duties of their Personal Representative/Executor, guardian for minor children and/or their property (if applicable), and Trustee (if applicable)
- Review with client the importance of choosing a Personal Representative/Executor, guardian for minor children and/or their property (if applicable), and Trustee (if applicable) who is capable of completing these duties
- Is this a blended family? Ensure client understands implications that can result in leaving children from prior marriage without inheritance
- **Local Jurisdiction Matters**
  - Residence (past or present) in a Community Property State? (AZ, CA, ID, LA, NV, NM, TX, WA, WI)
  - Has a community property agreement between spouses been executed?
  - Does the jurisdiction have Homestead laws restricting the client's ability to devise real property through a will?
  - Is a Personal Property Memorandum available?
  - Effect of marital status on bequests, devises, inheritance and ability to disinherit
  - Effect of legal relationship with child (step, biological, adopted) on bequests, devises, inheritance and ability to disinherit
  - Are there specific qualification requirements for a Guardian (e.g., must proposed Guardian be a resident of client's state of domicile or a blood relative in order to serve)?
  - Are there specific qualification requirements for Executors (e.g., must proposed Guardian be a resident of client's state of domicile or a blood relative in order to serve)?

### **DISCUSS HEALTH CARE SURROGATE/LIVING WILL**

JAGINST 5801.3

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**DISCUSS POWERS OF ATTORNEY**

- Are springing POAs allowed?

**DISCUSS PROBATE AVOIDANCE**

- Pros/Cons
- Alternatives (Joint Ownership/Pay on Death Designation/Tenants by Entirety)

**DISCUSS GENERAL ESTATE TAX IMPLICATIONS (if appropriate)**

**LOCAL NLSO ITEMS (*add as appropriate*)**

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## **SPECIAL NEEDS TRUST**

### **OBTAIN BASIC INFORMATION**

- What is the nature of the intended beneficiary's disability?
- What public benefits is the potential beneficiary currently receiving or is likely to receive in the future (e.g. Medicaid, Social Security Disability (SSI, not SSDI))?
- Request a copy of and review any benefits paperwork or correspondence

### **DISCUSS SNT**

- Basic purpose and operation of SNT
- Effect of inheritance and insurance payout on continued eligibility for benefits
- Duties of trustee and possible need for professional
- Intervivos and testamentary
- Options (3<sup>rd</sup> party, pooled, commonwealth or community trusts)
- Discuss need for Medicaid reimbursement provision (only a grantor (self-settled) trust issue, not a third-party trust issue)

### **DISCUSS EFFECT OF NOT HAVING A SNT IF ONE IS NEEDED**

### **DRAFT SNT (IF AUTHORIZED) OR PROVIDE REFERRAL**

### **LOCAL NLISO ITEMS *(add as appropriate)***

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### **SGLI/INSURANCE**

#### **HAS THE CLIENT OPTED FOR THE MAXIMUM SGLI AND SPOUSE COVERAGE (if appropriate)?**

- Discuss effective dates of SGLI
- Explain significance of insurance payout as non-probate property
- Discuss income tax implications for recipient of insurance
- Discuss who client has named as beneficiary

#### **REDESIGNATE BENEFICIARY OF INSURANCE POLICY BASED UPON TRUST PROVISIONS IN WILL PREPARED**

- The attorney should prepare the new beneficiary designation using standardized language. For example, a married servicemember whose SGLI beneficiary designation reads first to "spouse," second to "children" may defeat the purpose of a testamentary trust established for the benefit of minor children. As stated, the secondary beneficiaries are the children in their individual capacity, in which case the death benefit will go to their guardian or conservator and not the trustee. Thus, changing the secondary beneficiary to "The trustee of the testamentary trust for my children established in my Last Will" assures that the testamentary trust is properly funded.
- As an alternative for clients with minor beneficiaries who did not opt to create a testamentary trust for those beneficiaries, they may wish to designate the custodian of a UGMA/UTMA custodianship as the beneficiary. Before drafting such a designation, the attorney must consult that state's law to verify the title of the uniform act as well as that act's provisions regarding the age at which children will/can receive the property outright. The designation would read, "to \_\_\_\_ as [state] UTMA (UGMA) custodian for each of my children."

#### **LOCAL NLSO ITEMS *(add as appropriate)***

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### **DECEDENT ISSUES**

- Department of Veterans Affairs (burial and survivor)
- IRAs/401K/Thrift Savings Plan
- Necessity of retitling property (e.g., motor vehicles, real estate & overview of probate issues)
- Survivor Benefit Plan
- TRICARE/DEERS
- Social Security
- Right to a military funeral/burial in national cemetery
- Active duty death gratuity
- Survivor benefits (*see* Survivor Benefits checklist)

**LOCAL NLISO ITEMS** (*add as appropriate*)



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## **WILL EXECUTION**

Client must thoroughly review each document and have the opportunity to discuss any questions with the attorney.

- Once any corrections are made to the documents, the documents should be assembled and stapled together
- If the will was drafted as a military testamentary instrument, ensure that it has the required preamble and appropriate self-proving affidavit. Note that military testamentary instruments must be executed by an attorney authorized by 10 U.S.C. §1044d (civilian or military legal assistance attorney)
- If the will was not drafted as a military testamentary instrument, ensure there is no military testamentary instrument preamble, the self-proving affidavit is specific for the respective state, and the notary block is for a civilian notary or Legalman
- The client should show his/her identification card to the notary and the witnesses and should answer the following questions appropriately:
  - Are you (name of person on the will)?
  - Have you read and do you understand this document?
  - Is this your last will and testament?
  - Does this document properly dispose of your estate and assets in accordance with your wishes in the event of your death?
  - Would you like these people (name witnesses) to act as witnesses to your signature on this document?
  - Would you like (name of notary) to notarize the signatures on this document?
  - Are you at least 18 years of age?
  - Do you consider yourself to be of sound and disposing mind?
  - Are you currently taking any medication that may hinder your judgment?
  - Are you acting here today of your own free will, under no undue influence or coercion from any source?
- Have the client sign the signature page of the will (not the attestation/self-proving clause)
- Have the witnesses sign the signature page of the will (not the attestation/self-proving clause)
- Have the client raise his/her right hand and administer the oath to the client: "Do you solemnly swear that you are the same (name on will) who signed this document as his/her last will and testament; that you signed this document in the presence and hearing of these two witnesses; that the witnesses each signed in the presence and hearing of one another and of you? Do you further swear that you are at least 18 years of age or older, of sound and disposing mind, acting here today of your own free will, and are under no undue influence or coercion from any source (so help you God)?"
- Once the client has taken the oath, have the client sign the attestation/self-proving clause
- Have the witnesses raise their right hands and administer the oath to the witnesses: "Do you solemnly swear or affirm that you are the same (name of witness) and (name of witness) who served as witnesses to the last will and testament of (name on will); that

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each of you signed this document as witnesses in the presence and hearing of the testator/trix and of one another and, that the testator/trix signed in the presence and hearing of each of you? Do you further swear that to the best of your knowledge and belief, the testator/trix is at least 18 years of age or older, is of sound and disposing mind and is acting here today of his/her free will and under no undue influence or coercion from any source (so help you God)?”

- Have the witnesses sign the attestation/self-proving clause
- Have the notary sign the attestation/self-proving clause
- Execute the remaining documents one by one as required depending upon the requirements of the respective jurisdiction. Ensure the client understands the document and is signing of his/her free will. Ensure the directions contained in the document comport with the client's wishes in the event of his/her incapacity. If an oath is to be administered, ensure the oath is administered before the person signs the document
- Have the client sign the notary log

Provide the client instructions on safeguarding originals (e.g., do not remove pages, make any marks (no writing or other notations), or otherwise attempt to modify the document)

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## **BANKRUPTCY**

### **OBTAIN BASIC INFORMATION**

- What is the total amount of debt?
- What is the nature of debt (secured, unsecured, joint, cosigners)?
- What is the status of debt (already in arrears, post judgment, etc.)?
- Has the client filed or attempted to file for bankruptcy previously?
- Has the client already explored alternatives?
- Is client filing bankruptcy with spouse? Do spouses need dual representation waiver letter?

### **DISCUSS CHAPTERS 7 AND 13**

- Substantive basics and procedural process for each
- Dischargeable v. non-dischargeable debts
- Exempt property v. non-exempt property
- Property with security interest (reaffirmation, lien-stripping)
- Liability of 3<sup>rd</sup> parties (co-signers, joint debtors)

### **DISCUSS POTENTIAL IMPACT**

- Potential security clearance (*see* SECNAV 5510.30A) and Personal Reliability Program (pilots, etc.) impact
- Length of time bankruptcy stays on credit report and ability to obtain credit/favorable credit terms in future
- Prohibition against filing again
- Effect on co-signers and joint debtors
- Liquidation of certain property

### **DISCUSS ALTERNATIVES**

- Budgeting
- Negotiating the debt down
- Attacking the basis of the debt (potential consumer defenses, SCRA, etc.)
- Consumer credit counseling/consolidation loans (caution)
- Active Duty, contact Command Financial Specialist

### **LOCAL NLSO ITEMS (*add as appropriate*)**

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## **CREDIT AND DEBT COLLECTION**

### **OBTAIN BASIC INFORMATION**

- To whom is the debt owed?
- What is the total amount of debt
- What is the nature of debt (secured, unsecured, joint, cosigners)
- What is the status of debt (past due, post-judgment, etc.)?
- If post-judgment, did the client or a representative participate in any judicial hearings? If not, why not?
- What actions has the debt collector or creditor taken to collect the debt?
- Obtain a copy of and review all relevant paperwork (court document, correspondence, underlying contracts and court orders)
- Have client obtain and provide his or her credit report(s) for review

### **DISCUSS FDCPA RIGHTS**

- Verification of the debt
- Abusive practices
- Disputing the debt

### **DISCUSS FCRA RIGHTS**

- Dispute the entry
- CRA obligation to verify
- Timeframes for action
- Submitting a statement

### **DISCUSS CREDIT SCAMS**

- Credit repair
- Debt consolidation

### **DISCUSS COMMAND INVOLVEMENT IN COLLECTION PROCESS**

### **CONSIDER, DISCUSS, AND TAKE ACTION AS APPROPRIATE**

- SCRA rights and violations (default judgment, affidavit of military service)
- FDCPA debt dispute and verification
- FCRA dispute and verification
- State statutory protections
- Identity theft and consumer fraud issues (*see* Consumer Fraud and Identity Theft checklist)
- Bankruptcy counseling (*see* Bankruptcy checklist)

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- Provide FTC web address (<http://www.ftc.gov/ftc/consumer.htm>)
- Negotiate with creditor on behalf of client (if appropriate)
- Creditor garnishment/lien options (*see involuntary allotment, garnishment checklist*)

**LOCAL NLSO ITEMS** (*add as appropriate*)

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## **CAR CONTRACTS**

### **OBTAIN BASIC INFORMATION**

- What is the nature of the client's complaint?
- Obtain a written detailed description of event (when did it happen, how did client get to the dealership, who was salesperson, how long was client there, what promises were extended, etc.)?
- Is the car new or used? How many miles?
- Has the client attempted to have the damage repaired or corrected?
- If client's credit was rejected, was client provided written notice of the rejection?
- Have client provide and review **ALL** associated paperwork (financing, warranty, purchase, bill or sale, titling/registration, insurance, etc.)
- Have client obtain a CARFAX report to identify any pre-existing damage (if applicable)

### **CONSIDER AND DISCUSS AS APPROPRIATE**

- Bait and Switch
- Yo-yo sales (a.k.a. spot sales)
- Lemon laws
- TILA issues
- FCRA issues
- Holder in due course rule
- Warranty issues (including Magnuson-Moss)
- Contract law pertaining to contract
- Financing issues
- State laws (UDAP, other vehicle/consumer laws)
- Repossession (voluntary/involuntary, expenses)
- UCC options

### **TAKE ACTION AS APPROPRIATE**

- Contact seller/dealership (and/or automaker district office)
- Contact state consumer protection division
- Contact state board of motor vehicle dealers
- Contact state DMV
- Lawsuit (small claims, ELAP)

### **LOCAL NLISO ITEMS** *(add as appropriate)*

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## **INVOLUNTARY ALLOTMENT/GARNISHMENT/DFAS ISSUES**

### **OBTAIN BASIC INFORMATION**

- To whom is the debt owed (NEX, government, creditor, debt collector, ex-spouse, child)?
- What is the nature of the debt (commercial, spousal/child support, repayment, NEX)?
- Has the debt been reduced to judgment?
- Did the client or a representative participate in any judicial hearings? If not, why not?
- Has the client received notice from DFAS yet regarding the proposed garnishment?
- Obtain a copy of and review all relevant paperwork (court document, DFAS notice, correspondence, underlying contracts, and court orders)

### **DISCUSS BASIC GARNISHMENT/REPAYMENT PROCESS**

- DFAS procedures (consumer, support) (*see* <http://www.dfas.mil/money/>)
- Time frames
- Limitations of amount of garnishment (consumer, support)
- Waivers (military overpayment)

### **DISCUSS POTENTIAL ACTIONS**

- SCRA compliance
- Negotiate debt
- Reopen default judgment (SCRA)
- Potential DD Form 2654 action/defenses
- Challenge directly with creditor/debt collector
- *See also* Child Custody, Visitation, and Support Checklist

### **LOCAL NLSO ITEMS (*add as appropriate*)**

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## **IDENTITY THEFT**

(See <http://www.consumer.gov/idtheft/>)

### **OBTAIN BASIC INFORMATION**

- What is the nature of the fraud?
- Does the client know the identity of the perpetrator?
- Has the client filed a complaint, police report, or affidavit of fraud?
- Determine the basics of the complaint (what, when, where, how)
- Have client obtain any supporting documentation (contracts, credit reports, letters, notifications)

### **DISCUSS PROTECTIONS UNDER EFTA, FCRA, FCBA AND RECOMMEND/TAKE ACTION**

#### **RECOMMEND/TAKE ACTION**

- File a fraud alert
- File Identity Theft Affidavit (<http://www.ftc.gov/bcp/online/pubs/credit/affidavit.pdf>)
- File a police report
- Obtain credit report from 3 major reporting agencies
- Report the incident to the FTC (*see website*)  
([https://rn.ftc.gov/pls/dod/widtpubl\\$.startup?Z\\_ORG\\_CODE=PU03](https://rn.ftc.gov/pls/dod/widtpubl$.startup?Z_ORG_CODE=PU03)) and state consumer protection division
- File a complaint with the AFDCB
- Alert chain of command
- Discuss acquiring commercial credit guard services

### **CONSIDER AND DISCUSS STATE LAWS REGARDING PAYDAY LOANS, PREDATORY LENDERS, OTHER CONSUMER SCAMS**

### **DISCUSS CREDIT COLLECTION PROTECTIONS AND TAKE ACTION (SEE CREDIT AND DEBT COLLECTION CHECKLIST)**

### **LOCAL NLISO ITEMS (*add as appropriate*)**



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**CONSUMER FRAUD**  
**(Including Payday Loans, Door-to-Door Sales & Title Loans)**

**OBTAIN BASIC INFORMATION**

- What is the nature of the fraud?
- Does the client know the identity of the perpetrator?
- Has the client filed a complaint, police report, or affidavit of fraud?
- Determine the basics of the complaint (what, when, where, how)
- Has client obtained **ALL** supporting documentation (contracts, credit reports, letters, notifications)?

**DISCUSS PROTECTIONS UNDER FDCPA, EFTA, FCRA, FCBA AND RECOMMEND/TAKE ACTION**

- Contract Law
- State Specific Consumer Law Protections

**RECOMMEND/TAKE ACTION**

- File a police report
- Obtain credit report from 3 major reporting agencies
- File a complaint with the AFDCB
- File a complaint with FTC (*see* <http://www.ftc.gov/ftc/consumer.htm>)

**CONSIDER AND DISCUSS STATE LAWS REGARDING PAYDAY LOANS, PREDATORY LENDERS, OTHER CONSUMER SCAMS**

**DISCUSS CREDIT COLLECTION PROTECTIONS AND TAKE ACTION (SEE CREDIT AND DEBT COLLECTION AND ID THEFT CHECKLIST)**

**LOCAL NLSO ITEMS** (*add as appropriate*)

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## **PERSONAL CONTRACT REVIEW**

### **OBTAIN BASIC INFORMATION**

- Review the contract
- Has the contract been signed?
- Does the contract concern a personal legal matter or a business?

### **DISCUSS CONTRACT PROVISIONS**

- Basic terms
- Penalty clauses
- Ability and procedure to terminate
- SCRA waivers?
- Total cost of contract
- Effect of oral agreements/promises
- General contract law/UCC
- Revocation of contracts

### **LOCAL NLSO ITEMS *(add as appropriate)***

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## **LANDLORD/TENANT**

### **OBTAIN BASIC INFORMATION**

- What is the nature of the rental (apartment, single-family home, etc.) and who is the landlord?
- Is the property on a public-private venture (PPV) or a set-aside program (a.k.a. RPP)?
- What is the lease term?
- How long has the client been in the property?
- In what manner and how often has the subject of the dispute been communicated between the landlord and the tenant (judicial, written, oral, repeat, etc.)?
- Has the client attempted to resolve the issue him or herself?
- Obtain and review all relevant paperwork (lease and addendum, any written correspondence, etc.)

### **DISCUSS BASIC CONTRACT LAW PERTAINING TO LEASE**

### **CONSIDER AND DISCUSS APPLICABLE STATE LAW**

- Landlord obligations (habitability, quiet enjoyment, etc.)
- Self-help and withholding rent
- Ordinances and housing codes
- Early termination
- Security deposits
- Eviction

### **CONSIDER AND DISCUSS SCRA ISSUES**

- Eviction protection (50 U.S.C. App. §530)
- Stays (50 U.S.C. App. §522)
- Early termination (50 U.S.C. App. §535)

### **CONSIDER AND TAKE ACTION AS APPROPRIATE**

- Contact landlord, property manager, counsel for landlord/property manager
- Contact housing office (mediate PPV/RPP disputes)
- Legal action (small claims, ELAP)
- Contact local building inspectors regarding Code enforcement

### **LOCAL NLSO ITEMS *(add as appropriate)***

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## **MILITARY NATURALIZATION**

### **OBTAIN BASIC INFORMATION**

- What is the client's basis for eligibility?
- Where is the client in the process?
- Has the client previously filed for naturalization?
- Has the client ever been discharged, and what was the characterization of that discharge?
- Does the client know who his command point of contact is, and has the client consulted with the POC?
- Does the client have any pending disciplinary issues with the command that may result in discharge? (Conviction of crime may result in ineligibility for or revocation of citizenship, *see* 8 U.S.C. 1227(a)(2))
- Is the client pending deployment or PCS out of the area?

### **DISCUSS THE BASIC NATURALIZATION PROCESS**

- Service during military hostilities, one year military service, five years LPR (8 U.S.C. 1439 and 1440)
- Forms required
- Fees (if any)
- Processing time and locations
- Service-specific points of contact for military application
- Discuss USCIS website ([www.uscis.gov](http://www.uscis.gov))

### **REFER TO SERVICE-SPECIFIC POC**

### **LOCAL NLSO ITEMS (*add as appropriate*)**

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## **POAS**

### **OBTAIN BASIC INFORMATION**

- Why is customer seeking a POA?
- What is the nature of the relationship between the customer and agent?
- Review standard POA worksheet with the customer

### **DISCUSS POA BASICS**

- Describe the difference between a General POA and Special POA
- Discuss duration and advantages of limiting duration
- Discuss the liability of the principal (grantor) for the acts of the agent (grantee)
- Describe durability
- Describe the process for revocation
- Discuss state-specific statutory POA (if applicable/available under state law)
- Discuss limitations of *in loco parentis* SPOA (*see* Family Care Plan checklist if appropriate)
- Discuss extension provisions in SCRA (if appropriate)
- Recommend alternatives

### **LOCAL NLSO ITEMS (*add as appropriate*)**